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Attorneys for Defendant  
Aetna Life Insurance Company

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

SETH LYMAN,

Plaintiff,

vs.

THE MEGA LIFE AND HEALTH  
INSURANCE COMPANY, an entity  
authorized to do business in the State of  
Nevada; AETNA LIFE INSURANCE  
COMPANY, an entity authorized to do  
business in the State of Nevada; AETNA  
STUDENT HEALTH, an entity authorized  
to do business in the State of Nevada; and  
DOES 1-50, inclusive,

Defendants.

Case No. 3:10-cv-00554-HDM-RAM

**STATEMENT CONCERNING  
REMOVED ACTION**

Defendant Aetna Life Insurance Company (“Aetna”) submits this statement concerning removal pursuant to the Court’s September 13, 2010 minute order (Dkt. 2).

**1. Date that the Complaint was served.**

The plaintiff served defendant Aetna Life Insurance Company through the Nevada Department of Insurance on August 13, 2010.<sup>1</sup> The plaintiff served The Mega Life And

<sup>1</sup> Aetna preserves its defense of inadequate service of process.

1 Health Insurance Company (“MegaLife”) through the Nevada Department of Insurance on  
 2 July 15, 2010. The plaintiff later voluntarily dismissed MegaLife on September 24, 2010.  
 3 (Dkt. 6.)

4 **2. Date that the Summons was served.**

5 The plaintiff served defendant Aetna Life Insurance Company through the Nevada  
 6 Department of Insurance on August 13, 2010. The plaintiff served former defendant  
 7 MegaLife through the Nevada Department of Insurance on July 15, 2010.

8 **3. Citizenship and summary of amount in controversy.**

9 The parties are diverse. Plaintiff Lyman alleges that he is a resident of Washoe  
 10 County, Nevada. (Complaint ¶ 1.) Defendant Aetna is a Connecticut corporation, with its  
 11 principal place of business in Connecticut. Former defendant MegaLife is an Oklahoma  
 12 corporation with its principal place of business in Texas.

13 The amount in controversy exceeds this Court’s jurisdictional minimum. Taken  
 14 together, the plaintiff’s allegations and demands establish that the amount in controversy  
 15 exceeds \$75,000, exclusive of interest and costs:

16 *Alleged Contract Damages.* The plaintiff alleges breach of contract and seeks  
 17 damages for medical expenses incurred. (Complaint at ¶ 14, 20; Prayer at ¶ 3.) The  
 18 medical expenses at issue are at least \$22,368.

19 *Alleged Tort Damages.* The plaintiff alleges that Aetna breached a fiduciary duty  
 20 and acted in bad faith by “engaging in misconduct” where a “special element of reliance or  
 21 fiduciary duty existed.” (Complaint ¶¶ 37, 26-27.) For his tort damages, he seeks, among  
 22 other things, “damages based on lost wages, damages based upon inability to pay medical  
 23 bills and damages for pain and suffering.” (Prayer at ¶ 3.) These damages are alleged to  
 24 exceed \$10,000. (Complaint ¶ 28.)

25 *Alleged Statutory Damages.* In addition, Lyman alleges that Aetna violated  
 26 statutory duties by engaging in unfair trade practices. He alleges damages in excess of  
 27 \$10,000 on these violations. (Complaint at ¶ 32.)

28 *Alleged Punitive Damages.* Finally, Lyman alleges that he is entitled to recover

1 punitive damages. (See Complaint at ¶¶ 30-33, 29.) He alleges that these damages are “in  
2 excess of” \$10,000. (Complaint at ¶¶ 29, 33, Prayer at ¶ 2.)

3 In *BMW of North America v. Gore*, 517 U.S. 559, 574-75 (1996), the United States  
4 Supreme Court set forth guideposts to review punitive damage awards for excessiveness:  
5 (1) the degree of reprehensibility; (2) the difference between this remedy and the civil  
6 penalties authorized or imposed in comparable cases; and (3) the disparity between the  
7 harm suffered and the punitive damage award.

8 *Degree of Reprehensibility.* The Supreme Court set forth the factors to be  
9 considered in determining “reprehensibility” in *State Farm Mut. Auto. Ins. Co. v.*  
10 *Campbell*, 123 S.Ct. 1513, 1519-20 (2003). Those factors are whether (a) the harm caused  
11 was physical, as opposed to economic; (b) the conduct evidenced an indifference to or a  
12 reckless disregard of the health or safety of others; (c) the target of the conduct was  
13 financially vulnerable; (d) the conduct involved repeated actions, rather than an isolated  
14 incident; and (e) the harm was the result of intentional malice, trickery, or deceit, rather  
15 than a mere accident. *Id.* at 419, citing *Gore*, 517 U.S. at 576-77. By implication, the  
16 plaintiff has here invoked at least factors (a), (c), and (e).

17 *Comparison with civil penalties for similar conduct.* The relevant benchmarks in  
18 the present case are the penalty provisions of the Nevada insurance laws. If an insurance  
19 company engages in an unfair or deceptive act or practice, the Insurance Commissioner  
20 may impose a civil penalty of \$5,000 for each violation if the insurer knew or should have  
21 known that it was engaging in an unfair or deceptive act or practice. NRS  
22 § 686A.183(1)(a).

23 *Ratio of punitive damages to compensatory damages.* The Supreme Court has held  
24 that “in practice, few awards exceeding a single-digit ratio between punitive and  
25 compensatory damages, to a significant degree, will satisfy due process.” *Campbell*, 538  
26 U.S. at 425. *Campbell* recognized an inverse relationship between an award of  
27 compensatory damages and the permissible amount of punitive damages: “When  
28 compensatory damages are substantial, then a lesser ratio, perhaps only equal to

1 compensatory damages, can reach the outermost limit of the due process guarantee.”  
 2 *Campbell*, 538 U.S. at 425. The Court has stated, however, that “an award of more than  
 3 four times the amount of compensatory damages might be close to the line of  
 4 constitutional impropriety.” *Campbell*, 538 U.S. at 425.

5 *Other Nevada Punitive Damage Awards.* The Court may also consider punitive  
 6 damage awards rendered in other, similar cases. *See, e.g., Richmond v. Allstate Ins. Co.*,  
 7 897 F. Supp. 447, 450 (S.D. Cal. 1995). Because the facts of each case are different, the  
 8 amount of the verdict rendered in one case is not necessarily indicative of what will or  
 9 might occur in this case. But the case law shows that even where the contract damages are  
 10 minimal, Nevada juries have awarded significant bad faith and punitive damages. *See,*  
 11 *e. g., Albert H. Wohlers and Co. v. Bartgis*, 114 Nev. 1249, 969 P.2d 949 (1998) (jury  
 12 awarded \$7.5 million in punitive damages; court approved punitive damages of \$3.75  
 13 million); *Republic Ins. Co. v. Hires*, 107 Nev. 317, 810 P.2d 790 (1991) (jury awarded  
 14 \$22.5 million in punitive damages; court approved punitive damages of \$5 million);  
 15 *Guaranty Nat’l Ins. Co. v. Potter*, 112 Nev. 199, 912 P.2d 267 (1996) (jury awarded  
 16 \$1 million in punitive damages; court approved punitive damages of \$250,000); *United*  
 17 *Fire Ins. Co. v. McClelland*, 105 Nev. 504, 780 P.2d 193 (1989) (award of \$500,000 in  
 18 punitive damages and \$143,000 in compensatory damages); *Powers v. USAA Insurance*,  
 19 114 Nev. 690, 726, 962 P.2d 596, 618 at n. 8 (1997) (awarding \$397,000 in general  
 20 damages, \$5 million punitive damages); *General Builders v. GAIC*, 113 Nev. 346, 350,  
 21 934 P.2d 257, 260 (awarding \$947,566 in general damages and \$2.5 million in punitive  
 22 damages); *Industrial Indemnity Insurance v. Helms*, CV A 8056 HDM, *unpublished*  
 23 *disposition* (D. Nev. 1994) (awarding \$8.5 million in general damages and \$30 million in  
 24 punitive damages); *Barney v. Workams Auto Insurance*, CV 96-05481 (Second Judicial  
 25 District Court 5/7/2001) (awarding \$194,382 in compensatory damages and \$500,000 in  
 26 punitive damages) (awarding \$194,382 in compensatory damages and \$500,000 in punitive  
 27 damages); *Crimmins v. American National Insurance Co.* (Second Judicial District Court  
 28 5/27/03) (awarding \$983,000 in compensatory damages and \$650,000 in punitive

damages); *Merrick v. Paul Revere Life Insurance Co.*, CV-S-00731-JCM-RJJ (D. Nev. 2004) (awarding \$1,147,355.00 for past unpaid benefits, \$500,000.00 for mental and emotional distress, \$2,000,000.00 in punitive damages from Paul Revere, and \$8,000,000.00 in punitive damages from UnumProvident).<sup>2</sup>

*Claim For Attorneys' Fees.* Lyman alleges that he is entitled to recover attorneys' fees as an element of damages. (See Prayer at ¶ 4.)

*Conclusion.* Taken together, the plaintiff's allegations and demands establish that the amount in controversy exceeds \$75,000, exclusive of interest and costs. In addition to the \$22,368 in benefits at issue, the plaintiff has alleged tort damages "in excess of" \$10,000, statutory damages "in excess of" \$10,000, punitive damages "in excess of" \$10,000, plus attorneys' fees. Based on a typical 33 percent attorneys' contingent fee, this equals \$69,649 using the *minimum* damage values stated in the complaint—and the plaintiff's complaint indicates that their damages are "in excess" of the stated amounts. Alternatively, it is more likely than not that the jurisdictional minimum is met because the ratio of the compensatory damages alleged (\$42,368) to punitive damages need be only 1.3:1 to meet it (and this calculation includes no value for the attorneys' fees plaintiffs expressly seek).

**4. The reason for removal if filed more than 30 days after service.**

Not applicable – the removal was filed within 30 days of service on both defendants.

**5. The reason for removal if filed more than one year after the action was commenced in state court.**

Not applicable – the removal was filed within one year of commencement of the state court action.

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<sup>2</sup>See Notice of Removal (Dkt. 1) at Exhibit A, for trial court cases, unpublished dispositions, Trial Reporter synopses, and one website printout.)

**6. Defendants served who did not formally join.**

Undersigned counsel avows that pursuant to a discussion with Mega Life's counsel, Mega Life intended to join in the removal; however, the plaintiff voluntarily dismissed MegaLife as an improper party, shortly after Aetna removed.

The defendants are serving by mail a copy of the Minute Order concerning removal on the plaintiffs' counsel, along with this statement responding to the Minute Order.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of September, 2010.

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BY: /s/ Ann-Martha Andrews

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## CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2010, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

Steven J. Klearman, Esq.

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Attorneys for Plaintiff

/s/ *Roxann Draper*

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